

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu Berle, Chair
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DATE: September 23, 2004

SUBJECT: Drop Box Deposits for Filing (adopt Cal. Rules of Court, rule 201.6)
(Action Required)

Issue Statement

No uniform statewide rule of court currently authorizes or requires a court to use a drop box to accept papers for filing. No rule or statute prohibits the use of drop boxes, however, and at least several trial courts currently maintain drop boxes.

On August 29, 2003, the Judicial Council adopted Operating Guidelines and Directives for Budget Management in the Judicial Branch. Among the directives is the following: "All trial courts shall provide drop boxes during periods of shortened hours." The council also adopted a directive establishing "minimum standard hours" for the trial court clerk's office of 8:30 a.m. to 4:00 p.m., requiring the clerk's office to remain open at least six and one-half hours per day and encouraging clerk's offices to remain open between 8:00 a.m. and 5:00 p.m.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council adopt rule 201.6 of the California Rules of Court effective January 2005 in order to implement the Judicial Council Operating Guidelines and Directives for Budget management in the Judicial Branch as follows:

1. Require each trial court to provide a drop box for depositing documents if the clerk's office closes at any time between 8:30 a.m. and 4:00 p.m.;
2. Permit a court to provide a drop box at other times;
3. Specify when documents will be deemed to have been filed; and
4. Require that if a drop box is employed, there be a means to determine whether the documents were deposited by the court's deadline for same-day filing.

The text of proposed rule 201.6 is attached at page 6.

Rationale for Recommendation

There is authority to establish a drop box for filing papers when a court is physically closed on days that are not judicial holidays or weekends. Government Code section 68108 provides that if a court is closed for “unpaid furlough days,” it must “permit documents to be filed at a drop box.”

Under the council’s directives, a trial court clerk’s office should remain “open,” i.e., it should accept papers for filing, until at least 4:00 p.m. If a court physically closes its clerk’s office before then (“periods of shortened hours”), it must provide a drop box to deposit papers for filing. Permitting papers to be filed by depositing them in a drop box when the clerk’s office is closed would meet the council’s directive to maintain access to court services despite shortened hours for the clerk’s office. A court could choose to use a drop box at other times to allow a clerk’s office greater flexibility in staffing and potentially more efficient operation. Whether documents deposited in a drop box would be deemed filed on the same day depends on the time of deposit and each court’s deadline for same-day filing.

The new rule requires a court to provide a drop box if its clerk’s office filing counter is closed at any time between 8:30 a.m. and 4:00 p.m. Documents deposited in a drop box by 4:00 p.m.—or at a later time if a court allows same-day filing of documents deposited at a later time—would be deemed filed on the date of deposit, provided the clerk’s office is otherwise open to the public that day. In addition, the rule does not preclude a court from providing a drop box during hours that its clerk’s office filing counter is open.

California case law supports the new rule. Cases hold that a paper is filed when it is delivered to the proper officer at the place where it is to be filed during office hours. (See, e.g., *Usher v. Soltz* (1981) 123 Cal.App.3d 692, 697–699; *W.J. White Co. v. Winton* (1919) 41 Cal.App. 693, 694–695.) A paper is deemed timely filed in civil law and motion proceedings when it is submitted before the clerk’s office closes on the day the paper is due. (Cal. Rules of Court, rule 317(e).)¹

In an opinion addressing the use of a drop box for the receipt and filing of court papers and whether such use “cause[s] a court clerk’s office to be ‘open’ for judicial business,” the California Attorney General approved the use of a drop box within the clerk’s office when the office is open. (76 Ops.Cal.Atty.Gen. 78, 81 (1993).)

The Attorney General also opined that the mere use of a drop box to deposit papers on a day when the clerk’s office is physically closed to the public the entire day would not mean that the clerk’s office was open for business and that documents deposited

¹ Although this provision expressly applies to proceedings in civil law and motion, it appears to state a general principle. This subdivision (subd. (e)) of rule 317 serves to clarify the provision in subdivision (d) that prohibits the clerk from rejecting a motion paper because it was untimely submitted for filing.

on that day would be filed the same day. The opinion did not squarely address the situation presented in this proposal—the use of a drop box as the only means of filing papers during shortened hours of the court day. The opinion did, however, approve the use of a drop box as an alternative to counter filing to permit the clerk to perform duties other than counter service, as long as the documents were processed for filing on the date of deposit: “In short, we believe such a limited use of a drop box would meet the legal mandate that ‘filing’ means actual delivery of the document to the clerk at his or her place of business during working hours.” (*Ibid.*)

The drop box procedure described with approval by the Attorney General ensures that parties are not deprived of the means to file documents during the court day, whether or not the clerk’s office provides counter filing during all hours of operation.

Alternative Actions Considered

An alternative to the proposed rule is to have no rule that (1) requires a court to provide a drop box during shortened hours; (2) permits a court to provide a drop box at other times; (3) specifies when documents will be deemed to have been filed; and (4) requires that if a drop box is employed, there be a means to determine whether the documents were deposited by the court’s deadline for same-day filing.

Currently, even in the absence of a statewide rule, some courts provide drop boxes for depositing papers to be filed. Though there is not uniformity among those courts in the locations of drop boxes or the hours they are used, we have identified few problems resulting from the current use of drop boxes. The advisory committee, however, recommends adoption of the rule 201.6 because it will better ensure that courts accept papers for filing between 8:30 a.m. and 4:00 p.m. every court day, and it will clarify when papers are deemed to have been filed.

Comments From Interested Parties

The proposed rule was circulated for public comment to the usual RUPRO circulation between May 5 and June 4, 2004.² Comments were received from eight interested parties, including court managers and administrators, an attorney, an assistant executive officer, a local bar association, the Los Angeles County Court Reporters’ Association, the Superior Court of Orange County Rules and Forms Committee, and the State Bar Committee on Administration of Justice (CAJ).³ The comments addressed clarifying the applicability of the rule, the difficulty or impossibility of reconciling the rule’s same-day filing deadline with that in the electronic filing statute, the appropriate deadline time, and variability in operations among courts. In addition, this proposal was presented to the Joint Rules Subcommittee of the Trial

² An earlier version of the proposed rule was circulated during the winter 2004 cycle. The earlier proposal authorized, but did not require, the use of a drop box and set the deadline for same-day filing at 5:00 p.m. The proposal was revised in response to public and advisory committee comments and, because of significant changes, was circulated for comment again.

³ A comment chart is attached at pages 7–11.

Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (Joint Rules Subcommittee) at its July 8, 2004, teleconference.

The Superior Court of Orange County Rules and Forms Committee suggested adding “at any time” in the first sentence of (a), which then reads: “[**Use of drop box**] Whenever a clerk’s office filing counter is closed at any time between 8:30 a.m. and 4:00 p.m. on a court day” This meaning was intended, and the change has been made to the new rule.

CAJ supports the rule as drafted and commented on the difficulty of reconciling the different deadlines imposed by rule 201.6 and the electronic filing statute. The e-filing statute deadline for same-day filing is the earlier of 5:00 p.m. or whenever the filing counter is closed. (Code Civ. Proc., § 1010.6(a)(3).) Therefore, a court could close its filing counter before 4:00 p.m. and same-day filing by means of electronic filing would end at that time, even though same-day filing by drop box deposit would last until at least 4:00 p.m.

CAJ commented that it would support a rule that required drop boxes to be available until 5:00 p.m. “but recognizes that this would not be consistent with the electronic filing deadline, which precludes electronic filing when the counter is closed.” The statute does not, however, *preclude* electronic filing; rather, it doesn’t provide for same-day filing when the counter is closed. The proposed rule’s same-day filing deadline of 4:00 p.m.—or a later time if a court so provides—was not chosen because of any relationship to the electronic filing statute; it was chosen because the council’s directives set minimum standard hours for clerk’s offices of 8:30 a.m. to 4:00 p.m. and because when the rule circulated previously many courts commented that requiring drop boxes after 4:00 p.m. would require their staffs to work overtime.

An assistant court executive officer noted that for courts that currently deem documents to be filed on the day of deposit if they are deposited in the drop box by 5:00 p.m., the rule as circulated would have prohibited this or would have confused litigants and court staff regarding the date with which to file-stamp the documents (because under the original rule proposal, a document deposited after 4:00 p.m. would have been deemed filed the next court day). She suggested adding a provision that would allow a court to accept for same-day filing documents deposited in a drop box after 4:00 p.m. The committee’s response to this comment is discussed below.

A court program manager objected to the 4:00 p.m. deadline for same-day filing, commenting that deadlines should be consistent for drop box, electronic, and facsimile filings. Staff notes, however, that clerk’s office filing deadlines differ among the superior courts. Another court program manager suggested that each court be permitted to determine whether implementing this rule is in the public’s best interest.

The Orange County Bar Association (OCBA) suggested changing the time deadline for same-day filing to 5:00 p.m. OCBA also commented that the rule should specify the location of the drop box, requiring that it be in the immediate vicinity of the clerk's office and that the clerk's office should give notice of the location by posting this information on the clerk's office door. The committee believes that the location of drop boxes should be left to each court.

The Los Angeles County Court Reporter's Association (LACCRA) believes that the drop box should be available until 5:00 p.m. for same-day filing because transcripts have traditionally been accepted until that time. LACCRA believes that courts should be required to provide a drop box for the purpose of timely filing transcripts if access to the clerk's office is limited.

Several members of the Joint Rules Subcommittee were concerned that the proposal, as circulated, would have precluded a court from expanding the hours it offers drop box deposits beyond what the rule requires. They commented that attorneys and litigants in many courts are accustomed to a 5:00 p.m. deadline, and they would like to be able to continue to provide this greater access to court services. Rules subcommittee members were unanimous in recommending that the rule have mandatory minimum hours, but that it not require a court to end same-day filing via drop box deposits at 4:00 p.m.

In response to all comments suggesting that the rule permit same-day filing by drop box of documents deposited after 4:00 p.m., the Civil and Small Claims Advisory Committee modified the proposal to add the following provision to rule 201.6(b): "A court may provide for same-day filing of a document deposited in its drop box after 4:00 p.m. on a court day. If so, the court must give notice of the deadline for same-day filing of a document deposited in its drop box." The rule's provision applying to next-day filing and determining the date of deposit were also modified to reflect that a court may permit same-day filing of documents deposited in its drop box after 4:00 p.m.

Implementation Requirements and Costs

The costs of implementing the proposal should be minimal since the rule provides some flexibility in the deadline for same-day filing. This allows courts to maintain clerk's office staff until only 4:00 p.m. The rule also permits courts to use any reliable means to determine whether a document was deposited by the deadline for same-day filing. A court need not, for example, employ an automated date and time stamp, but rather could make the determination by removing or locking the drop box at the deadline time.

Rule 201.6 of the California Rules of Court is adopted, effective January 1, 2005, to read:

Rule 201.6. Drop box for filing documents

(a) [Use of drop box] Whenever a clerk's office filing counter is closed at any time between 8:30 a.m. and 4:00 p.m. on a court day, the court must provide a drop box for depositing documents to be filed with the clerk. A court may provide a drop box during other times.

(b) [Documents deemed filed on day of deposit] Any document deposited in a court's drop box up to and including 4:00 p.m. on a court day is deemed to have been deposited for filing on that day. A court may provide for same-day filing of a document deposited in its drop box after 4:00 p.m. on a court day. If so, the court must give notice of the deadline for same-day filing of a document deposited in its drop box.

(c) [Documents deemed filed on next court day] Any document deposited in a court's drop box is deemed to have been deposited for filing on the next court day, if:

(1) it is deposited on a court day after 4:00 p.m. or after the deadline for same-day filing if a court provides for a later time, or

(2) it is deposited on a judicial holiday.

(d) [Date and time documents deposited] A court must have a means of determining whether a document was deposited in the drop box by 4:00 p.m., or after the deadline for same-day filing if a court provides for a later time, on a court day.

Advisory Committee Comment (2005)

The notice required by rule 201.6(b) may be provided by the same means a court provides notice of its clerk's office hours. The means of providing notice may include the following: information on the court's Web site, a local rule provision, a notice in a legal newspaper, a sign in the clerk's office, or a sign near the drop box.

SP04-11
Drop Box Deposits for Filing (adopt rule 201.6 of the California Rules of Court)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Ronald L. Bauer Orange Co. Rules and Forms Committee Superior Court of Orange County Santa Ana	AM	N	Modify (a) to read: “Whenever a clerk’s office filing counter is closed <u>at any time</u> between 8:30 a.m. and 4:00 p.m. on a court day . . .”	Agree
2.	Mr. Saul Bercovitch The State Bar of California Committee on Administration of Justice San Francisco	A	Y	CAJ supports the proposed rule, as drafted. CAJ considered the issue of the different deadlines for same day filing imposed by the proposed rule and the electronic filing statute, and concluded that there is no meaningful way to reconcile the two different deadlines that would be imposed. Currently, the deadline for filing documents electronically is set by statute as 5:00 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier. (Code Civ. Proc. § 1010.6(a)(3).) CAJ believes that drop box hours should be designed to accommodate filings when the filing counter is <i>closed</i> . If drop box hours were to parallel electronic filing hours, drop boxes would not be available whenever the counter closed early, and the benefit of drop boxes to the courts and the litigants would be undermined. CAJ would support a rule that required drop boxes to be available until 5:00 p.m. – one hour later than the proposed rule would require – but recognizes that this would not be consistent with the electronic filing deadline, which precludes electronic filing when the counter is closed. [Staff note: The electronic filing statute does not preclude filing when the counter is closed, but	The rule has been modified to permit courts to provide same day filing by drop box deposits later than 4 p.m. if they choose to do so.

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				<p>any document filed after the counter is closed would be deemed filed on the next court day.]</p> <p>Separately, CAJ notes that the proposed rule does not address the issue of direct departmental filings, and the procedures to be followed when a direct-file department is closed. CAJ believes this issue should be addressed at some point.</p>	The rule is intended to provide a means to file papers when a court clerk's office is closed. The committee is unaware of courts that have limited hours in departments requiring direct department filing.
3.	Ms. Melissa Fowler-Bradley Asst. Court Executive Officer Superior Court of California, County of Shasta Redding	AM	N	<p>For courts that have drop boxes and currently allow documents to be filed on the day of deposit if deposited in the drop box by 5:00 p.m., the rule will prohibit or, at a minimum, confuse litigants and court staff regarding the date to file stamp the documents.</p> <p>I suggest an additional sentence be added at the end of (b) such as, "If a court by local rule accepts filings in a drop box until 5:00 p.m., those documents are deemed to have been deposited for filing on the date received." and (c) "If a court by local rule accepts drop box filings later than 4:00 p.m., the court must have a means of determining whether a document was deposited in the drop box by 5:00 p.m. on a court day." We would not want to reduce a service to the public that we are capable of continuing to provide.</p>	Agree. The rule has been modified accordingly.
4.	RL Goldner Court Program Supervisor Superior Court of California, County of Ventura	N	N	This proposal is not beneficial for all courts throughout California. Each court should determine whether or not it is in the public's best interest to implement, and be given the authority to choose based on the vastly differentiating variables.	Disagree. The rule implements Judicial Council directives and does allow a court to determine whether to use a drop box as long as the court provides a means to file documents until at least 4 p.m.

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				California courthouses have different organization charts, public/customer trends, and operations, so why implement rules that would benefit some and hinder others? Each courthouse should thrive independently to raise the public's customer service level.	
5.	Ms. Keri Griffith Court Program Manager Superior Court of California, County of Ventura	AM	N	I do not agree with the 4:00 p.m. deadline. Deadlines should be consistent for drop boxes, electronic and fax filings. It creates an unfair advantage [sic] for proper litigants who may not be aware of the 4:00 p.m. deadline.	Court clerk's offices do not have consistent filing hours currently. The rule provides some consistency, requiring courts to provide a means to file documents until at least 4 p.m.
6.	Ms. Kim Hubbard President Orange County Bar Association Irvine	AM	Y	<p>The reference to 4:00 p.m. should be changed to 5:00 p.m. because most people are accustomed to seeing public agencies open until 5:00.</p> <p>The following provisions should be added: (d) [Location of drop box] The drop box shall be located in the immediate vicinity of the Clerk's office containing the filing counter, and a sign shall be placed on the office door directing the filer to location the drop box.</p> <p>(e) [Providing of envelopes an instruction] The court shall provide at each drop box a supply of envelopes of a size of not less than 10 inches by 12 inches. Written instructions shall be affixed to the drop box, instructing the depositor to place the envelope into the drop box. The instructions shall state that if the depositor desires to receive a conformed copy, the envelope must contain an additional copy of the document, together with a stamped, self-addressed</p>	<p>The rule has been modified to permit courts to provide same day filing by drop box deposits later than 4 p.m. if they choose to do so.</p> <p>Disagree. Each court should be able to determine the most suitable location of its drop box and the best means to inform court users of its location.</p> <p>Disagree. Each court should be able to determine the level of instructions and assistance to provide to drop box filers.</p>

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				<p>return envelope. Further, the instructions shall include a fee schedule and shall state the nearest location where stamps and envelopes may be obtained.</p> <p>The additional language proposed is based on an attorney's experience trying to locate the drop box at the Superior Court of Orange County, North Justice Center, and encountering a pro per litigant who had no means to staple his responsive pleading or to attach his filing fee check to the document and had no envelope.</p>	
7.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	AM	Y	The rule should not preclude a court from providing same day filing of documents deposited in a drop box after 4 p.m. The rule should not require a drop box at every court location in a county.	Agree. The rule has been modified to permit courts to provide same day filing by drop box deposits later than 4 p.m. if they choose to do so.
8.	Mr. Leonard Sacks Attorney at Law Granada Hills	A	N	Small Claims court litigants should have as many conveniences as possible.	No response required.
9.	Ms. Arnella I. Sims President Los Angeles County Court Reporters Association Los Angeles	AM	N	<p>Court reporters are required to file appeal transcripts and other court-ordered transcripts in the clerk's office. The transcripts have traditionally been accepted for filing up until 5:00 p.m.</p> <p>Some jurisdictions use drop box specifically for depositing court reporter transcripts in order to facilitate timely filing. Because courtroom are normally in session until 4:30 p.m., court reporters must be able to file transcripts in the drop box and</p>	The rule has been modified to permit courts to provide same day filing by drop box deposits later than 4 p.m. if they choose to do so.

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				be assured that the transcripts are deemed timely filed if received before 5:00 p.m. Courts should be required to provide a drop box for the purpose of timely filing transcripts if access to the clerk's office is limited.	